



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by M. Maggie Crotty

SYNOPSIS AS INTRODUCED:

205 ILCS 635/1-3	from Ch. 17, par. 2321-3
205 ILCS 635/2-3	from Ch. 17, par. 2322-3
205 ILCS 635/2-4	from Ch. 17, par. 2322-4
205 ILCS 635/2-6	from Ch. 17, par. 2322-6
205 ILCS 635/3-1	from Ch. 17, par. 2323-1
205 ILCS 635/3-2	from Ch. 17, par. 2323-2
205 ILCS 635/3-4	from Ch. 17, par. 2323-4
205 ILCS 635/3-5	from Ch. 17, par. 2323-5
205 ILCS 635/4-1	from Ch. 17, par. 2324-1
205 ILCS 635/4-5	from Ch. 17, par. 2324-5
205 ILCS 635/4-9.1 new	
205 ILCS 635/4-15 new	

Amends the Residential Mortgage Act of 1987. In provisions pertaining to applications for a residential mortgage license and disclosing information about any person, entity, or ultimate equitable owner that owns or controls stock ownership, requires reporting any class of stock of the license applicant (now 10% of any class of stock). Requires an applicant or licensee to aver with his or her license application or renewal that he or she will not knowingly employ or permit an individual to serve as an officer, director, or employee for the licensee if the individual has been convicted of a felony or any criminal offense relating to dishonesty or breach of trust unless the Commissioner of Banks and Real Estate has waived this requirement. Provides that the Commissioner may require a plan for the disposition of any residential mortgage loans not closed or funded when the licensee becomes inactive. Provides that the Commissioner may no longer require licensees to maintain a bond for errors and omissions in performing activities regulated by the Act. Provides that, beginning 2 years after the effective date of this amendatory Act, mortgage brokers and licensees may no longer substitute compilation financial statements with certain audits. Requires a licensee's corporate or full service branch office to comply with any applicable zoning laws or ordinances and home office or business regulations. Provides that the Commissioner may, in making rules with respect to net worth, establish separate requirements for not for profit entities or their affiliates that are serving economically depressed or financially underserved areas. Expands the Commissioner's functions, powers, and duties. Reinstates a Section to require licensees to submit annual reports of mortgage activity to the Commissioner. Creates a returned check policy for residential mortgage licensees and applicants. Increases certain fines.

LRB093 18470 SAS 44184 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning financial regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Sections 1-3, 2-3, 2-4, 2-6, 3-1, 3-2, 3-4,
6 3-5, 4-1, and 4-5 and by adding Sections 4-9.1 and 4-15 as
7 follows:

8 (205 ILCS 635/1-3) (from Ch. 17, par. 2321-3)

9 Sec. 1-3. Necessity for License; Scope of Act.

10 (a) No person, partnership, association, corporation or
11 other entity shall engage in the business of brokering,
12 funding, originating, servicing or purchasing of residential
13 mortgage loans without first obtaining a license from the
14 Commissioner in accordance with the licensing procedure
15 provided in this Article I and such regulations as may be
16 promulgated by the Commissioner. The licensing provisions of
17 this Section shall not apply to any entity engaged solely in
18 commercial mortgage lending or to any person, partnership
19 association, corporation or other entity exempted pursuant to
20 Section 1-4, subsection (d), of this Act or in accordance with
21 regulations promulgated by the Commissioner hereunder.

22 (b) No person, partnership, association, corporation, or
23 other entity except a licensee under this Act or an entity
24 exempt from licensing pursuant to Section 1-4, subsection (d),
25 of this Act shall do any business under any name or title, or
26 circulate or use any advertising or make any representation or
27 give any information to any person, which indicates or
28 reasonably implies activity within the scope of this Act.

29 (c) The Commissioner may, through the Attorney General,
30 request the circuit court of either Cook or Sangamon County to
31 issue an injunction to restrain any person from violating or
32 continuing to violate any of the foregoing provisions of this

1 Section.

2 (d) When the Commissioner has reasonable cause to believe
3 that any entity which has not submitted an application for
4 licensure is conducting any of the activities described in
5 subsection (a) hereof, the Commissioner shall have the power to
6 examine all books and records of the entity and any additional
7 documentation necessary in order to determine whether such
8 entity should become licensed under this Act.

9 (e) Any person, partnership, association, corporation or
10 other entity who violates any provision of this Section commits
11 a business offense and shall be fined an amount not to exceed
12 \$25,000 ~~\$5,000~~.

13 (f) Each person, partnership, association, corporation or
14 other entity conducting activities regulated by this Act shall
15 be issued one license. Each office, place of business or
16 location at which a residential mortgage licensee conducts any
17 part of his or her business must be recorded with the
18 Commissioner pursuant to Section 2-8 of this Act.

19 (g) Licensees under this Act shall solicit, broker, fund,
20 originate, service and purchase residential mortgage loans
21 only in conformity with the provisions of this Act and such
22 rules and regulations as may be promulgated by the
23 Commissioner.

24 (h) This Act applies to all entities doing business in
25 Illinois as residential mortgage bankers, as defined by "An Act
26 to provide for the regulation of mortgage bankers", approved
27 September 15, 1977, as amended, regardless of whether licensed
28 under that or any prior Act. Any existing residential mortgage
29 lender or residential mortgage broker in Illinois whether or
30 not previously licensed, must operate in accordance with this
31 Act.

32 (i) This Act is a successor Act to and a continuance of the
33 regulation of residential mortgage bankers provided in, "An Act
34 to provide for the regulation of mortgage bankers", approved
35 September 15, 1977, as amended.

36 Entities and persons subject to the predecessor Act shall

1 be subject to this Act from and after its effective date.

2 (Source: P.A. 86-137; 87-642.)

3 (205 ILCS 635/2-3) (from Ch. 17, par. 2322-3)

4 Sec. 2-3. Application form.

5 (a) Application for a residential mortgage license must be
6 made in accordance with Section 2-6. The application shall be
7 in writing, under oath, and on a form obtained from and
8 prescribed by the Commissioner.

9 (b) The application shall contain the name and complete
10 business and residential address or addresses of the license
11 applicant. If the license applicant is a partnership,
12 association, corporation or other form of business
13 organization, the application shall contain the names and
14 complete business and residential addresses of each member,
15 director and principal officer thereof. Such application shall
16 also include a description of the activities of the license
17 applicant, in such detail and for such periods, as the
18 Commissioner may require, including all of the following:

19 (1) An affirmation of financial solvency noting such
20 capitalization requirements as may be required by the
21 Commissioner, and access to such credit as may be required
22 by the Commissioner.

23 (2) An affirmation that the license applicant or its
24 members, directors or principals as may be appropriate, are
25 at least 18 years of age.

26 (3) Information as to the character, fitness,
27 financial and business responsibility, background,
28 experience, and criminal record of any (i) person, entity,
29 or ultimate equitable owner that owns or controls, directly
30 or indirectly, any amount of 10% or more of any class of
31 stock of the license applicant; (ii) person, entity, or
32 ultimate equitable owner that is not a depository
33 institution, as defined in Section 1007.50 of the Savings
34 Bank Act, that lends, provides, or infuses, directly or
35 indirectly, in any way, funds to or into a license

1 applicant, in an amount equal to or more than 10% of the
2 license applicant's net worth; (iii) person, entity, or
3 ultimate equitable owner that controls, directly or
4 indirectly, the election of 25% or more of the members of
5 the board of directors of a license applicant; or (iv)
6 person, entity, or ultimate equitable owner that the
7 Commissioner finds influences management of the license
8 applicant.

9 (4) Upon written request by the licensee and
10 notwithstanding the provisions of paragraphs (1), (2), and
11 (3) of this subsection, the Commissioner may permit the
12 licensee to omit all or part of the information required by
13 those paragraphs if, in lieu of the omitted information,
14 the licensee submits an affidavit stating that the
15 information submitted on the licensee's previous renewal
16 application is still true and accurate. The Commissioner
17 may promulgate rules prescribing the form and content of
18 the affidavit that are necessary to accomplish the purposes
19 of this Section.

20 (5) Such other information as required by regulations
21 of the Commissioner.

22 (Source: P.A. 89-355, eff. 8-17-95.)

23 (205 ILCS 635/2-4) (from Ch. 17, par. 2322-4)

24 Sec. 2-4. Averments of Licensee. Each application for
25 license or for the renewal of a license shall be accompanied by
26 the following averments stating that the applicant:

27 (a) Will maintain at least one full service office
28 within the State of Illinois pursuant to Section 3-4 of
29 this Act;

30 (b) Will maintain staff reasonably adequate to meet the
31 requirements of Section 3-4 of this Act;

32 (c) Will keep and maintain for 36 months the same
33 written records as required by the federal Equal Credit
34 Opportunity Act, and any other information required by
35 regulations of the Commissioner regarding any home

1 mortgage in the course of the conduct of its residential
2 mortgage business;

3 (d) Will file with the Commissioner, when due, any
4 report or reports which it is required to file under any of
5 the provisions of this Act;

6 (e) Will not engage, whether as principal or agent, in
7 the practice of rejecting residential mortgage
8 applications without reasonable cause, or varying terms or
9 application procedures without reasonable cause, for home
10 mortgages on real estate within any specific geographic
11 area from the terms or procedures generally provided by the
12 licensee within other geographic areas of the State;

13 (f) Will not engage in fraudulent home mortgage
14 underwriting practices;

15 (g) Will not make payment, whether directly or
16 indirectly, of any kind to any in house or fee appraiser of
17 any government or private money lending agency with which
18 an application for a home mortgage has been filed for the
19 purpose of influencing the independent judgment of the
20 appraiser with respect to the value of any real estate
21 which is to be covered by such home mortgage;

22 (h) Has filed tax returns (State and Federal) for the
23 past 3 years or filed with the Commissioner an accountant's
24 or attorney's statement as to why no return was filed;

25 (i) Will not engage in any discrimination or redlining
26 activities prohibited by Section 3-8 of this Act;

27 (j) Will not knowingly make any false promises likely
28 to influence or persuade, or pursue a course of
29 misrepresentation and false promises through agents,
30 solicitors, advertising or otherwise;

31 (k) Will not knowingly misrepresent, circumvent or
32 conceal, through whatever subterfuge or device, any of the
33 material particulars or the nature thereof, regarding a
34 transaction to which it is a party to the injury of another
35 party thereto;

36 (l) Will disburse funds in accordance with its

1 agreements;

2 (m) Has not committed a crime against the law of this
3 State, any other state or of the United States, involving
4 moral turpitude, fraudulent or dishonest dealing, and that
5 no final judgment has been entered against it in a civil
6 action upon grounds of fraud, misrepresentation or deceit
7 which has not been previously reported to the Commissioner;

8 (n) Will account or deliver to any person any personal
9 property such as money, fund, deposit, check, draft,
10 mortgage, other document or thing of value, which has come
11 into its possession, and which is not its property, or
12 which it is not in law or equity entitled to retain under
13 the circumstances, at the time which has been agreed upon
14 or is required by law, or, in the absence of a fixed time,
15 upon demand of the person entitled to such accounting and
16 delivery;

17 (o) Has not engaged in any conduct which would be cause
18 for denial of a license;

19 (p) Has not become insolvent;

20 (q) Has not submitted an application for a license
21 under this Act which contains a material misstatement;

22 (r) Has not demonstrated by course of conduct,
23 negligence or incompetence in performing any act for which
24 it is required to hold a license under this Act;

25 (s) Will advise the Commissioner in writing of any
26 changes to the information submitted on the most recent
27 application for license within 30 days of said change. The
28 written notice must be signed in the same form as the
29 application for license being amended;

30 (t) Will comply with the provisions of this Act, or
31 with any lawful order, rule or regulation made or issued
32 under the provisions of this Act;

33 (u) Will submit to periodic examination by the
34 Commissioner as required by this Act;

35 (v) Will advise the Commissioner in writing of
36 judgments entered against, and bankruptcy petitions by,

1 the license applicant within 5 days of occurrence;

2 (w) Will advise the Commissioner in writing within 30
3 days when the license applicant requests a licensee under
4 this Act to repurchase a loan, and the circumstances
5 therefor; ~~and~~

6 (x) Will advise the Commissioner in writing within 30
7 days when the license applicant is requested by another
8 entity to repurchase a loan, and the circumstances
9 therefor; ~~and~~

10 (y) Will at all times act in a manner consistent with
11 subsections (a) and (b) of Section 1-2 of this Act; ~~and~~

12 (z) ~~(x)~~ Will not knowingly hire or employ a loan
13 originator who is not registered with the Commissioner as
14 required under Section 7-1 of this Act; and

15 (z-1) Will not knowingly employ or otherwise permit,
16 except with prior written consent of the Commissioner, an
17 individual to serve as an officer, director, or employee
18 for the licensee if the individual has been convicted of a
19 felony or any criminal offense relating to dishonesty or
20 breach of trust.

21 A licensee who fails to fulfill obligations of an averment,
22 to comply with averments made, or otherwise violates any of the
23 averments made under this Section shall be subject to the
24 penalties in Section 4-5 of this Act.

25 (Source: P.A. 93-561, eff. 1-1-04; revised 10-9-03.)

26 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

27 Sec. 2-6. License issuance and renewal; fee.

28 (a) Beginning July 1, 2003, licenses shall be renewed every
29 year on the anniversary of the date of issuance of the original
30 license. Properly completed renewal application forms and
31 filing fees must be received by the Commissioner 60 days prior
32 to the renewal date.

33 (b) It shall be the responsibility of each licensee to
34 accomplish renewal of its license; failure of the licensee to
35 receive renewal forms absent a request sent by certified mail

1 for such forms will not waive said responsibility. Failure by a
2 licensee to submit a properly completed renewal application
3 form and fees in a timely fashion, absent a written extension
4 from the Commissioner, will result in the assessment of
5 additional fees, as follows:

6 (1) A fee of \$750 will be assessed to the licensee 30
7 days after the proper renewal date and \$1,500 each month
8 thereafter, until the license is either renewed or expires
9 pursuant to Section 2-6, subsections (c) and (d), of this
10 Act.

11 (2) Such fee will be assessed without prior notice to
12 the licensee, but will be assessed only in cases wherein
13 the Commissioner has in his or her possession documentation
14 of the licensee's continuing activity for which the
15 unexpired license was issued.

16 (c) A license which is not renewed by the date required in
17 this Section shall automatically become inactive. No activity
18 regulated by this Act shall be conducted by the licensee when a
19 license becomes inactive. The Commissioner may require the
20 licensee to provide a plan for the disposition of any
21 residential mortgage loans not closed or funded when the
22 license becomes inactive. The Commissioner may approve the
23 licensee conducting activities regulated by this Act with an
24 inactive license for the sole purpose of assisting borrowers in
25 the closing or funding of loans for which the licensee had an
26 active license at the time the loan application was taken from
27 a borrower. An inactive license may be reactivated by ~~filing a~~
28 ~~completed reactivation application with~~ the Commissioner upon
29 payment of the renewal fee, and payment of a reactivation fee
30 equal to the renewal fee.

31 (d) A license which is not renewed within one year of
32 becoming inactive shall expire.

33 (e) A licensee ceasing an activity or activities regulated
34 by this Act and desiring to no longer be licensed shall so
35 inform the Commissioner in writing and, at the same time,
36 convey the license and all other symbols or indicia of

1 licensure. The licensee shall include a plan for the withdrawal
2 from regulated business, including a timetable for the
3 disposition of the business. Upon receipt of such written
4 notice, the Commissioner shall issue a certified statement
5 canceling the license.

6 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; revised
7 9-23-03.)

8 (205 ILCS 635/3-1) (from Ch. 17, par. 2323-1)

9 Sec. 3-1. Bonds of licensees.

10 (a) Every licensee, with respect to any person appointed or
11 elected to any position requiring the receipt of payment,
12 management, or use of money belonging to a residential mortgage
13 licensee engaged in the activities of originating, servicing,
14 or purchasing mortgage loans or whose duties permit him or her
15 to have access to or custody of any of its money or securities
16 or custody of any money or securities belonging to third
17 parties or whose duties permit him or her regularly to make
18 entries in the books or other records of a licensee, shall,
19 before assuming his or her duties, maintain a fidelity bond in
20 the amount of \$100,000 by some fidelity insurance company
21 licensed to do business in this State.

22 (b) Each bond shall be for any loss the licensee may
23 sustain in money or other property through the commission of
24 any dishonest or criminal act or omission by any person
25 required to be bonded, whether committed alone or in concert
26 with another. The bond shall be in the form and amount approved
27 by the Commissioner who may at any time require one or more
28 additional bonds. A true copy of every bond, including all
29 riders and endorsements executed subsequent to the effective
30 date of the bond, shall be filed at all times with the
31 Commissioner. Each bond shall provide that a cancellation
32 thereof shall not become effective unless and until 30 days
33 notice in writing first shall have been given to the
34 Commissioner unless he or she shall have approved the
35 cancellation earlier. If the Commissioner believes the

1 licensee's business is being conducted in an unsafe manner due
2 to the lack of bonds or the inadequacy of bonds, he or she may
3 proceed against the licensee as provided for in Section 4-5.

4 (c) All licensees shall maintain a bond in accordance with
5 this subsection. Each bond shall be for the recovery of
6 expenses, fines, or fees due to or levied by the Commissioner
7 in accordance with this Act. The bond shall be payable when the
8 licensee fails to comply with any provisions of this Act and
9 shall be in the form of a surety or licensure bond in the
10 amount and form as prescribed by the Commissioner pursuant to
11 rules and regulations. The bond shall be payable to the Office
12 of Banks and Real Estate and shall be issued by some insurance
13 company authorized to do business in this State. A copy of the
14 bond, including any and all riders and endorsements executed
15 subsequent to the effective date of the bond, shall be placed
16 on file with the Office of Banks and Real Estate within 10 days
17 of the execution thereof.

18 (d) The Commissioner may promulgate rules with respect to
19 bonding requirements for residential mortgage licensees that
20 are reasonable and necessary to accomplish the purposes of this
21 Act.

22 (e) The Commissioner may require licensees to maintain a
23 bond for errors and omissions in performing activities
24 regulated by this Act.

25 (Source: P.A. 89-508, eff. 7-3-96.)

26 (205 ILCS 635/3-2) (from Ch. 17, par. 2323-2)

27 Sec. 3-2. Annual audit.

28 (a) At the licensee's fiscal year-end, but in no case more
29 than 12 months after the last audit conducted pursuant to this
30 Section, except as otherwise provided in this Section, it shall
31 be mandatory for each residential mortgage licensee to cause
32 its books and accounts to be audited by a certified public
33 accountant not connected with such licensee. The books and
34 records of all licensees under this Act shall be maintained on
35 an accrual basis. The audit must be sufficiently comprehensive

1 in scope to permit the expression of an opinion on the
2 financial statements, which must be prepared in accordance with
3 generally accepted accounting principles, and must be
4 performed in accordance with generally accepted auditing
5 standards. Notwithstanding the requirements of this
6 subsection, a licensee that is a first tier subsidiary may
7 submit audited consolidated financial statements of its parent
8 as long as the consolidated statements are supported by
9 consolidating statements. The licensee's chief financial
10 officer shall attest to the licensee's financial statements
11 disclosed in the consolidating statements.

12 (b) As used herein, the term "expression of opinion"
13 includes either (1) an unqualified opinion, (2) a qualified
14 opinion, (3) a disclaimer of opinion, or (4) an adverse
15 opinion.

16 (c) If a qualified or adverse opinion is expressed or if an
17 opinion is disclaimed, the reasons therefore must be fully
18 explained. An opinion, qualified as to a scope limitation,
19 shall not be acceptable.

20 (d) The most recent audit report shall be filed with the
21 Commissioner within 90 days after the end of the licensee's
22 fiscal year. The report filed with the Commissioner shall be
23 certified by the certified public accountant conducting the
24 audit. The Commissioner may promulgate rules regarding late
25 audit reports.

26 (e) If any licensee required to make an audit shall fail to
27 cause an audit to be made, the Commissioner shall cause the
28 same to be made by a certified public accountant at the
29 licensee's expense. The Commissioner shall select such
30 certified public accountant by advertising for bids or by such
31 other fair and impartial means as he or she establishes by
32 regulation.

33 (f) In lieu of the audit or compilation financial statement
34 required by this Section, a licensee shall submit and the
35 Commissioner may accept any audit made in conformance with the
36 audit requirements of the U.S. Department of Housing and Urban

1 Development.

2 (g) With respect to licensees who solely broker residential
3 mortgage loans after the effective date of this amendatory Act
4 of the 93rd General Assembly, as defined in subsection (o) of
5 Section 1-4, instead of the audit required by this Section, the
6 Commissioner may accept for a period no later than 2 years
7 after the effective date of this amendatory Act of the 93rd
8 General Assembly compilation financial statements prepared at
9 least every 12 months, and the compilation financial statement
10 must be prepared by an independent certified public accountant
11 licensed under the Illinois Public Accounting Act or by an
12 equivalent state licensing law with full disclosure in
13 accordance with generally accepted accounting principals and
14 must be submitted within 90 days after the end of the
15 licensee's fiscal year. If a licensee under this Section fails
16 to file a compilation as required, the Commissioner shall cause
17 an audit of the licensee's books and accounts to be made by a
18 certified public accountant at the licensee's expense. The
19 Commissioner shall select the certified public accountant by
20 advertising for bids or by such other fair and impartial means
21 as he or she establishes by rule. A licensee who files false or
22 misleading compilation financial statements is guilty of a
23 business offense and shall be fined not less than \$5,000.

24 (h) The workpapers of the certified public accountants
25 employed by each licensee for purposes of this Section are to
26 be made available to the Commissioner or the Commissioner's
27 designee upon request and may be reproduced by the Commissioner
28 or the Commissioner's designee to enable to the Commissioner to
29 carry out the purposes of this Act.

30 (i) Notwithstanding any other provision of this Section, if
31 a licensee relying on subsection (g) of this Section causes its
32 books to be audited at any other time or causes its financial
33 statements to be reviewed, a complete copy of the audited or
34 reviewed financial statements shall be delivered to the
35 Commissioner at the time of the annual license renewal payment
36 following receipt by the licensee of the audited or reviewed

1 financial statements. All workpapers shall be made available to
2 the Commissioner upon request. The financial statements and
3 workpapers may be reproduced by the Commissioner or the
4 Commissioner's designee to carry out the purposes of this Act.
5 (Source: P.A. 93-561, eff. 1-1-04.)

6 (205 ILCS 635/3-4) (from Ch. 17, par. 2323-4)

7 Sec. 3-4. Office and staff within the State.

8 (a) A licensee whose principal place of business is located
9 in the State of Illinois shall maintain at least one full
10 service office with staff reasonably adequate to handle
11 efficiently communications, questions, and all other matters
12 relating to any application for a home mortgage or an existing
13 home mortgage with respect to which such licensee is performing
14 services, regardless of kind, for any borrower or lender, note
15 owner or holder, or for himself or herself while engaged in the
16 residential mortgage business. The location and operation of a
17 full service office shall be in compliance with any applicable
18 zoning laws or ordinances and home office or business
19 regulations.

20 (b) In lieu of maintaining a full service office in the
21 State of Illinois, a licensee whose principal place of business
22 is located outside the State of Illinois must submit a
23 certified audit as required in Section 3-2 of this Act
24 evidencing a minimum net worth of \$100,000, which must be
25 maintained at all times, and shall submit and maintain a
26 fidelity bond in the amount of \$100,000.

27 (Source: P.A. 89-355, eff. 8-17-95; 90-301, eff. 8-1-97;
28 90-772, eff. 1-1-99.)

29 (205 ILCS 635/3-5) (from Ch. 17, par. 2323-5)

30 Sec. 3-5. Net worth requirement. A licensee that holds a
31 license on the effective date of this amendatory Act of the
32 93rd General Assembly shall have and maintain a net worth of
33 not less than \$100,000; however, no later than 2 years after
34 the effective date of this amendatory Act of the 93rd General

1 Assembly, the licensee must maintain a net worth of not less
2 than \$150,000. A licensee that first obtains a license after
3 the effective date of this amendatory Act of the 93rd General
4 Assembly must have and maintain a net worth of not less than
5 \$150,000. Notwithstanding other requirements of this Section,
6 the net worth requirement for a residential mortgage licensee
7 whose only licensable activity is that of brokering residential
8 mortgage loans and that holds a license on the effective date
9 of this amendatory Act of the 93rd General Assembly shall be
10 \$35,000; however, no later than 2 years after the effective
11 date of this amendatory Act of the 93rd General Assembly, the
12 licensee must maintain a net worth of not less than \$50,000.
13 Such a licensee that first obtains a license after the
14 effective date of this amendatory Act of the 93rd General
15 Assembly must have and maintain a net worth of not less than
16 \$50,000. Net worth shall be evidenced by a balance sheet
17 prepared by a certified public accountant in accordance with
18 generally accepted accounting principles and generally
19 accepted auditing standards or by the compilation financial
20 statements authorized under subsection (g) of Section 3-2. The
21 Commissioner may promulgate rules with respect to net worth
22 definitions and requirements for residential mortgage
23 licensees as necessary to accomplish the purposes of this Act.
24 In promulgating such rules, the Commissioner may consider
25 establishing separate net worth requirements for not for profit
26 entities or their affiliates that are serving economically
27 depressed or financially underserved areas. In lieu of the net
28 worth requirement established by this Section, the
29 Commissioner may accept evidence of conformance by the licensee
30 with the net worth requirements of the United States Department
31 of Housing and Urban Development.

32 (Source: P.A. 93-561, eff. 1-1-04.)

33 (205 ILCS 635/4-1) (from Ch. 17, par. 2324-1)

34 Sec. 4-1. Commissioner of Banks and Real Estate; functions,
35 powers, and duties. The functions, powers, and duties of the

1 Commissioner of Banks and Real Estate shall include the
2 following:

3 (a) To issue or refuse to issue any license as provided by
4 this Act;

5 (b) To revoke or suspend for cause any license issued under
6 this Act;

7 (c) To keep records of all licenses issued under this Act;

8 (d) To receive, consider, investigate, and act upon
9 complaints made by any person in connection with any
10 residential mortgage licensee in this State;

11 (e) To consider and act upon any recommendations from the
12 Residential Mortgage Board;

13 (f) To prescribe the forms of and receive:

14 (1) applications for licenses; and

15 (2) all reports and all books and records required to
16 be made by any licensee under this Act, including annual
17 audited financial statements and annual reports of
18 mortgage activity;

19 (g) To adopt rules and regulations necessary and proper for
20 the administration of this Act;

21 (h) To subpoena documents and witnesses and compel their
22 attendance and production, to administer oaths, and to require
23 the production of any books, papers, or other materials
24 relevant to any inquiry authorized by this Act;

25 (i) To require information with regard to any license
26 applicant as he or she may deem desirable, with due regard to
27 the paramount interests of the public as to the experience,
28 background, honesty, truthfulness, integrity, and competency
29 of the license applicant as to financial transactions involving
30 primary or subordinate mortgage financing, and where the
31 license applicant is an entity other than an individual, as to
32 the honesty, truthfulness, integrity, and competency of any
33 officer or director of the corporation, association, or other
34 entity, or the members of a partnership;

35 (j) To examine the books and records of every licensee
36 under this Act at intervals as specified in Section 4-2;

1 (k) To enforce provisions of this Act;

2 (l) To levy fees, fines, and charges for services performed
3 in administering this Act; the aggregate of all fees collected
4 by the Commissioner on and after the effective date of this Act
5 shall be paid promptly after receipt of the same, accompanied
6 by a detailed statement thereof, into the Savings and
7 Residential Finance Regulatory Fund; the amounts deposited
8 into that Fund shall be used for the ordinary and contingent
9 expenses of the Office of Banks and Real Estate. Nothing in
10 this Act shall prevent continuing the practice of paying
11 expenses involving salaries, retirement, social security, and
12 State-paid insurance of State officers by appropriation from
13 the General Revenue Fund.

14 (m) To appoint examiners, supervisors, experts, and
15 special assistants as needed to effectively and efficiently
16 administer this Act; ~~and~~

17 (n) To conduct hearings for the purpose of:

18 (1) appeals of orders of the Commissioner;

19 (2) suspensions or revocations of licenses, or fining
20 of licensees;

21 (3) investigating:

22 (i) complaints against licensees; or

23 (ii) annual gross delinquency rates; and

24 (4) carrying out the purposes of this Act; ~~and~~

25 (o) To exercise exclusive visitorial power over a licensee
26 and to permit a foreign residential mortgage regulator with an
27 appropriate supervisory interest in the parent or affiliate of
28 a licensee to exercise exclusive visitorial power over a
29 licensee;

30 (p) To enter into cooperative agreements with state
31 regulatory authorities of other states to provide for
32 examination of corporate offices or branches of those states
33 and to accept reports of such examinations;

34 (q) To assign an examiner or examiners to monitor the
35 affairs of a licensee with whatever frequency the Commissioner
36 determines appropriate and to charge the licensee for

1 reasonable and necessary expenses of the Commissioner, if in
2 the opinion of the Commissioner an emergency exists or appears
3 likely to occur; and

4 (r) To impose civil penalties of up to \$50 per day against
5 a licensee for failing to respond to a regulatory request or
6 reporting requirement.

7 (Source: P.A. 89-355, eff. 8-17-95; 89-508, eff. 7-3-96.)

8 (205 ILCS 635/4-5) (from Ch. 17, par. 2324-5)

9 Sec. 4-5. Suspension, revocation of licenses; fines.

10 (a) Upon written notice to a licensee, the Commissioner may
11 suspend or revoke any license issued pursuant to this Act if he
12 or she shall make a finding of one or more of the following in
13 the notice that:

14 (1) Through separate acts or an act or a course of
15 conduct, the licensee has violated any provisions of this
16 Act, any rule or regulation promulgated by the Commissioner
17 or of any other law, rule or regulation of this State or
18 the United States.

19 (2) Any fact or condition exists which, if it had
20 existed at the time of the original application for such
21 license would have warranted the Commissioner in refusing
22 originally to issue such license.

23 (3) If a licensee is other than an individual, any
24 ultimate equitable owner, officer, director, or member of
25 the licensed partnership, association, corporation, or
26 other entity has so acted or failed to act as would be
27 cause for suspending or revoking a license to that party as
28 an individual.

29 (b) No license shall be suspended or revoked, except as
30 provided in this Section, nor shall any licensee be fined
31 without notice of his or her right to a hearing as provided in
32 Section 4-12 of this Act.

33 (c) The Commissioner, on good cause shown that an emergency
34 exists, may suspend any license for a period not exceeding 180
35 days, pending investigation. Upon a showing that a licensee has

1 failed to meet the experience or educational requirements of
2 Section 2-2 or the requirements of subsection (g) of Section
3 3-2, the Commissioner shall suspend, prior to hearing as
4 provided in Section 4-12, the license until those requirements
5 have been met.

6 (d) The provisions of subsection (e) of Section 2-6 of this
7 Act shall not affect a licensee's civil or criminal liability
8 for acts committed prior to surrender of a license.

9 (e) No revocation, suspension or surrender of any license
10 shall impair or affect the obligation of any pre-existing
11 lawful contract between the licensee and any person.

12 (f) Every license issued under this Act shall remain in
13 force and effect until the same shall have expired without
14 renewal, have been surrendered, revoked or suspended in
15 accordance with the provisions of this Act, but the
16 Commissioner shall have authority to reinstate a suspended
17 license or to issue a new license to a licensee whose license
18 shall have been revoked if no fact or condition then exists
19 which would have warranted the Commissioner in refusing
20 originally to issue such license under this Act.

21 (g) Whenever the Commissioner shall revoke or suspend a
22 license issued pursuant to this Act or fine a licensee under
23 this Act, he or she shall forthwith execute in duplicate a
24 written order to that effect. The Commissioner shall publish
25 notice of such order in the Illinois Register and a newspaper
26 of general circulation in the county in which the license is
27 located and shall forthwith serve a copy of such order upon the
28 licensee. Any such order may be reviewed in the manner provided
29 by Section 4-12 of this Act.

30 (h) When the Commissioner finds any person in violation of
31 the grounds set forth in subsection (i), he or she may enter an
32 order imposing one or more of the following penalties:

33 (1) Revocation of license;

34 (2) Suspension of a license subject to reinstatement
35 upon satisfying all reasonable conditions the Commissioner
36 may specify;

1 (3) Placement of the licensee or applicant on probation
2 for a period of time and subject to all reasonable
3 conditions as the Commissioner may specify;

4 (4) Issuance of a reprimand;

5 (5) Imposition of a fine not to exceed \$25,000 for each
6 count of separate offense; and

7 (6) Denial of a license.

8 (i) The following acts shall constitute grounds for which
9 the disciplinary actions specified in subsection (h) above may
10 be taken:

11 (1) Being convicted or found guilty, regardless of
12 pendency of an appeal, of a crime in any jurisdiction which
13 involves fraud, dishonest dealing, or any other act of
14 moral turpitude;

15 (2) Fraud, misrepresentation, deceit or negligence in
16 any mortgage financing transaction;

17 (3) A material or intentional misstatement of fact on
18 an initial or renewal application;

19 (4) Failure to follow the Commissioner's regulations
20 with respect to placement of funds in escrow accounts;

21 (5) Insolvency or filing under any provision of the
22 Bankruptcy Code as a debtor;

23 (6) Failure to account or deliver to any person any
24 property such as any money, fund, deposit, check, draft,
25 mortgage, or other document or thing of value, which has
26 come into his or her hands and which is not his or her
27 property or which he or she is not in law or equity
28 entitled to retain, under the circumstances and at the time
29 which has been agreed upon or is required by law or, in the
30 absence of a fixed time, upon demand of the person entitled
31 to such accounting and delivery;

32 (7) Failure to disburse funds in accordance with
33 agreements;

34 (8) Any misuse, misapplication, or misappropriation of
35 trust funds or escrow funds;

36 (9) Having a license, or the equivalent, to practice

1 any profession or occupation revoked, suspended, or
2 otherwise acted against, including the denial of licensure
3 by a licensing authority of this State or another state,
4 territory or country for fraud, dishonest dealing or any
5 other act of moral turpitude;

6 (10) Failure to issue a satisfaction of mortgage when
7 the residential mortgage has been executed and proceeds
8 were not disbursed to the benefit of the mortgagor and when
9 the mortgagor has fully paid licensee's costs and
10 commission;

11 (11) Failure to comply with any order of the
12 Commissioner or rule made or issued under the provisions of
13 this Act;

14 (12) Engaging in activities regulated by this Act
15 without a current, active license unless specifically
16 exempted by this Act;

17 (13) Failure to pay in a timely manner any fee, charge
18 or fine under this Act;

19 (14) Failure to maintain, preserve, and keep available
20 for examination, all books, accounts or other documents
21 required by the provisions of this Act and the rules of the
22 Commissioner;

23 (15) Refusal to permit an investigation or examination
24 of the licensee's or its affiliates' books and records or
25 refusal to comply with the Commissioner's subpoena or
26 subpoena duces tecum;

27 (16) A pattern of substantially underestimating the
28 maximum closing costs;

29 (17) Failure to comply with or violation of any
30 provision of this Act.

31 (j) A licensee shall be subject to the disciplinary actions
32 specified in this Act for violations of subsection (i) by any
33 officer, director, shareholder, joint venture, partner,
34 ultimate equitable owner, or employee of the licensee.

35 (k) Such licensee shall be subject to suspension or
36 revocation for employee actions only if there is a pattern of

1 repeated violations by employees or the licensee has knowledge
2 of the violations.

3 (1) Procedure for surrender of license:

4 (1) The Commissioner may, after 10 days notice by
5 certified mail to the licensee at the address set forth on
6 the license, stating the contemplated action and in general
7 the grounds therefor and the date, time and place of a
8 hearing thereon, and after providing the licensee with a
9 reasonable opportunity to be heard prior to such action,
10 fine such licensee an amount not exceeding \$25,000 ~~\$10,000~~
11 per violation, or revoke or suspend any license issued
12 hereunder if he or she finds that:

13 (i) The licensee has failed to comply with any
14 provision of this Act or any order, decision, finding,
15 rule, regulation or direction of the Commissioner
16 lawfully made pursuant to the authority of this Act; or

17 (ii) Any fact or condition exists which, if it had
18 existed at the time of the original application for the
19 license, clearly would have warranted the Commissioner
20 in refusing to issue the license.

21 (2) Any licensee may surrender a license by delivering
22 to the Commissioner written notice that he or she thereby
23 surrenders such license, but surrender shall not affect the
24 licensee's civil or criminal liability for acts committed
25 prior to surrender or entitle the licensee to a return of
26 any part of the license fee.

27 (Source: P.A. 93-561, eff. 1-1-04.)

28 (205 ILCS 635/4-9.1 new)

29 Sec. 4-9.1. Annual report of mortgage activity. On or
30 before March 1 of each year, each licensee, except residential
31 mortgage loan brokers, shall file a report with the
32 Commissioner that shall disclose the following information
33 with respect to the immediately preceding calendar year:

34 (a) A list of home mortgages granted, issued, originated or
35 closed during the report period, with respect to which such

1 licensee has had any connection. This list shall show each
2 census tract, in regions where such census tracts have been
3 established, and by zip code in all other regions, the number
4 and aggregate dollar amount of applications for, and the number
5 granted and aggregate dollar amount of:

6 (1) Conventional mortgage loans;

7 (2) Mortgage loans issued under the National Housing
8 Act, Title 12, United States Code, Chapter 13; and

9 (3) Mortgage loans guaranteed under the provisions of
10 the Federal Veteran's Benefit Act, Title 38, United States
11 Code, Chapter 37, Subchapter II.

12 (b) List by zip code in those areas having no census tract:

13 (1) The total number of home mortgages on real estate
14 situated in this State with respect to which the licensee
15 has had any connection and which are in default on the last
16 day of the reporting period; and

17 (2) The total number of claims paid during the
18 reporting period on home mortgages with respect to which
19 the licensee has had any connection, including the date of
20 the first default thereon and the date each such
21 foreclosure proceeding was instituted.

22 (c) If the Commissioner finds that another report that the
23 licensee is required to compile is equivalent to the Annual
24 Report of Mortgage Activity, then the Commissioner may accept
25 that report as fulfilling the reporting requirements of this
26 Section. The report required pursuant to the Home Mortgage
27 Disclosure Act of 1975, 12 U.S.C., 2801 et seq. and Federal
28 Reserve Board Regulation C, 12 C.F.R. Part 203, is an example
29 of a report that the Commissioner may find fulfills the
30 requirements of this Section, if the Commissioner finds the
31 report equivalent to the Annual Report of Mortgage Activity.

32 (d) The Commissioner may also require by rules that
33 licensees report such additional information as is necessary to
34 assure strict compliance with this Act.

35 Notwithstanding the exemption from licensure provided for
36 service corporations of certain savings institutions and

1 subsidiaries or affiliates of certain banks and foreign banking
2 corporations in clauses (viii) and (ix) of paragraph (1) of
3 subsection (d) of Section 1-4, such service corporations,
4 subsidiaries or affiliates shall file the annual report of
5 mortgage activity required by this Section.

6 (205 ILCS 635/4-15 new)

7 Sec. 4-15. Returned checks; fees. Any person who delivers a
8 check or other payment to the Commissioner that is returned to
9 the Commissioner unpaid by the financial institution upon which
10 it is drawn shall pay to the Commissioner, in addition to the
11 amount already owed to the Commissioner, a fee of \$50. The
12 Commissioner shall notify the person that payment of fees and
13 finances shall be paid to the Commissioner by certified check or
14 money order within 30 calendar days of the notification. If,
15 after the expiration of 30 days from the date of the
16 notification, the person has failed to submit the necessary
17 remittance, the Commissioner shall automatically terminate the
18 license or certificate of registration or deny the application,
19 without a hearing. If, after termination or denial, the person
20 seeks a license or certificate of registration, he or she shall
21 apply to the Commissioner for restoration or issuance of the
22 license or certificate of registration and pay all expenses of
23 processing this application. The Commissioner may establish a
24 fee for the processing of an application for restoration of a
25 license to pay all the expenses of processing this application.
26 The Commissioner may waive the fees due under this Section in
27 individual cases where the Commissioner finds that the fees
28 would be unreasonable or unnecessarily burdensome.